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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 235 and 252

RIN 0750-AI10

Defense Federal Acquisition Regulation Supplement: Clauses with Alternates—Research and Development Contracting (DFARS Case 2013-D026)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create an overarching prescription for the research and development-related clause with an alternate. The rule also proposes to add a separate prescription for the basic clause and for the alternate, and to include in the regulation the full text of the alternate clause.

DATES: Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before [Insert date 60 days after date of publication in the **FEDERAL REGISTER**], to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2013-D026, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2013-D026" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2013-D026." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2013-D026" on your attached document.
- o E-mail: dfars@mail.mil. Include DFARS Case 2013-D026 in the subject line of the message.
- o Fax: 571-372-6094.
- o Mail: Defense Acquisition Regulations System, Attn: (Ms. Annette Gray, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Annette Gray, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6093; facsimile 571-372-6101.

SUPPLEMENTARY INFORMATION:

I. Background

In order to facilitate use of automated contract writing systems, DoD is processing multiple cases, by DFARS part, to modify the naming convention for clauses with alternates, revise the clause prescriptions and clause prefaces, and provide each alternate clause in full text in the regulation.

The inclusion of the full text of the alternate clause in the regulation should make the terms of the alternate clearer to contractors and to DoD contracting officers. The current convention for alternate clauses is to show only the paragraphs that differ from the basic clause. Placing the alternate clause in full text in the regulation will clarify paragraph substitutions. As a result, inapplicable paragraphs from the basic clause that are superseded by the alternate will not be included in solicitations or contracts, reducing the potential for confusion.

II. Discussion and Analysis

This proposed rule addresses clause 252.235-7003, Frequency Authorization, and its alternate. The rule does not revise the prescriptions in any substantive way or change the applicability of the basic clause or the alternate. The rule proposes to make the following changes:

- Amend section 235.072, Additional Contract Clauses, to reflect the restructuring of 252.235-7003, Frequency Authorization, into basic and alternate clauses with corresponding distinctive clause prescriptions for each clause. The new basic clause title is "Frequency Authorization-Basic". Similarly, the title of the alternate clause is "Frequency Authorization-Alternate". The specific prescriptions for the basic clause and the alternate clause address the requirements for their individual use to enable proper selection of either the basic clause or the alternate clause as appropriate.

- Revise clause 252.235-7003 to reflect the inclusion of the full text of the alternate clause in addition to the full text of the basic clause. The preface for clause 252.235-7003 is revised to add paragraph (a) for the basic clause, which refers to the prescription at 235.072(b)(1) for use of the basic clause. Likewise, the paragraph (b) preface has been added to refer to the prescription for the alternate clause and also expanded to address the difference between the alternate clause and the basic clause. The preface at paragraph (b) for the alternate clause reads as follows: "(b) Frequency Authorization-Alternate. For the specific prescription for use of the alternate, see 235.072(b)(2). The alternate uses a different paragraph (c) than the basic clause." The proposed changes will increase the clarity and ease of use of the basic clause and alternate

clause, but will not revise the applicability of the clauses in any way. The text of the alternate clause will no longer consist solely of paragraph (c), and instead will include the entire text of 252.235-7003 (basic clause) along with paragraph (c) substituted for the corresponding paragraph of the basic clause.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et

seq., because it merely revises the prescriptions and reformats a clause with an alternate. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of this case is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create prescriptions for the basic and alternate versions of DFARS clause 252.235-7003, Frequency Authorization, and to include the full text of the clause alternate.

The use of stand-alone basic and alternate clauses and tailored prescriptions for the basic and alternate versions of the DFARS clause will facilitate use of automated contract writing systems. The prior convention required the prescription for the basic clause to address all the possibilities covered by the alternate, and then the prescription for the alternate addressed only those differences for the use of that particular alternate. This rule will revise the prescriptions so that the regulation will contain the full text of the basic and alternate clause and each will stand on its own. The prescriptions will not be revised in any way to change the applicability.

Additionally, the inclusion of the full text of the alternate clause should make the terms of the alternate clause clearer to offerors and contractors, as well as to DoD contracting officers. Instead of the current convention for the alternate

to show only paragraphs that differ from the basic clause, this rule proposes to include the full text of each version of the clause in the regulation. This will assist in making the terms of the clauses clearer, because all paragraph substitutions will be identified. Inapplicable paragraphs from the basic version of the clause that are superseded by the alternate will not be included in solicitations or contracts and this should prevent confusion.

Potential offerors, including small businesses, may be affected by this rule by seeing an unfamiliar format for clause alternates in solicitations and contracts issued by DoD contracting activities. According to the Federal Procurement Data System, in Fiscal Year 2012, DoD made approximately 270,000 contract awards (not including modifications and orders) that exceeded the micro-purchase threshold, of which approximately 180,000 (67%) were awarded to about 35,000 unique small business entities. It is unknown how many of these contracts were awarded that included an alternate to a DFARS provision or clause. Nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how clause alternates are presented in the solicitations and contracts will be changed. This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new format of the

clause alternates in full text contained in contracts issued by any DoD contracting activity. The rule also anticipates saving contractors time by making all paragraph substitutions from the basic version of the clause and not requiring the contractors to read inapplicable paragraphs contained in the basic version of the clause where the alternate is also included in the solicitation and contract. The overall burden caused by this rule is expected to be negligible and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that will accomplish the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2013-D026), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of

Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 235 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 235 and 252 are proposed to be amended as follows:

1. The authority citation for parts 235 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 235-RESEARCH AND DEVELOPMENT CONTRACTING

2. Section 235.072 paragraph (b) is revised to read as follows:
235.

235.072 Additional contract clauses.

* * * * *

(b) Use the basic or the alternate of the clause at 252.235-7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(1) Use the clause Frequency Authorization-Basic if agency procedures do not authorize the use of DD Form 1494, Application

for Equipment Frequency Allocation, to obtain radio frequency authorization.

(2) Use the clause Frequency Authorization-Alternate if agency procedures authorize the use of DD Form 1494, Application for Equipment Frequency Allocation, to obtain frequency authorization.

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PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.235-7003 is revised to read as follows:

252.235-7003 Frequency authorization.

As prescribed in 235.072(b), use one of the following clauses:

(a) Frequency Authorization-Basic. For the specific prescription for use of the basic clause, see 235.072(b)(1).

FREQUENCY AUTHORIZATION-BASIC (DATE)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Contracting Officer shall furnish the procedures for obtaining radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

(b) Frequency Authorization-Alternate. For the specific prescription for use of the alternate, see 235.072(b)(2). The alternate uses a different paragraph (c) than the basic clause.

FREQUENCY AUTHORIZATION-ALTERNATE (DATE)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The contractor shall use DD Form 1494, Application for Equipment Frequency Allocation, to obtain radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development,

production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

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